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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,575	09/26/2003	Bailey W. Mitchell	0219.02	3422
25295	7590	09/09/2005	EXAMINER	
USDA, ARS, OTT 5601 SUNNYSIDE AVE RM 4-1159 BELTSVILLE, MD 20705-5131			DOLE, TIMOTHY J	
			ART UNIT	PAPER NUMBER
			2858	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/670,575

Applicant(s)

MITCHELL ET AL.

Examiner

Timothy J. Dole

Art Unit

2858

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12-16 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitchell et al.

Referring to claim 12, Mitchell et al. discloses a portable high efficiency electrostatic sampling device comprising: at least one discharge electrode (fig. 1 (3)), a high voltage power supply operatively connected to said at least one electrode (column 4, lines 18-49); a power source operatively connected to said high voltage power supply and at least one discharge electrode (column 4, lines 18-49), wherein said high voltage power supply effects ionization from said at least one electrode (column 4, lines 18-49); wherein said device generates a sufficient electrostatic charge to capture viable organisms on a grounded, conductive material (fig. 1 (4), column 4, lines 18-26, column 6, line 66 – column 7, line 1 and abstract).

Referring to claim 13, Mitchell et al. discloses the device as claimed, further comprising a voltage regulator operatively connected to said power source and said high voltage power supply (column 6, lines 22-25 and column 9, lines 61-62)).

Referring to claim 14, Mitchell et al. discloses the device as claimed, further comprising a first sealed compartment (fig. 3 (16)) creating a watertight enclosure of electronic parts.

Referring to claim 15, Mitchell et al. discloses the device as claimed, further comprising a second sealed compartment creating a watertight enclosure of said power source (column 6, lines 49-53).

Referring to claim 16, Mitchell et al. discloses the device as claimed wherein said power source is selected from the group consisting of at least one battery, an AC powered adaptor with a DC output, and combinations thereof (column 6, lines 22-25).

Referring to claim 18, Mitchell et al. discloses the device as claimed wherein said grounded, conductive material is selected from the group consisting of water (fig. 2 (8) and column 14, line 32), cell culture media, microbiological media, metal material, and conductive carbon.

Referring to claim 19, Mitchell et al. discloses a method for collecting airborne particulates comprising: placing a portable high efficiency electrostatic sampling device of claim 12 in a vicinity to be sampled (column 9, lines 24-29), applying a high negative voltage to at least one discharge electrode to create a strong electrostatic field close a grounded, conductive material (column 9, lines 55-62), and collecting particulates in or on said grounded, conductive material (column 10, lines 22-28) wherein said electrostatic field generates a sufficient electrostatic charge to capture viable organisms on a grounded, conductive plate (fig. 1 (4), column 4, lines 18-26, column 6, line 66 – column 7, line 1 and abstract).

Referring to claim 20, Mitchell et al. discloses the method as claimed wherein said particulates are microorganisms (abstract).

Referring to claim 21, Mitchell et al. discloses a method for collecting airborne particulates comprising: placing a portable, high efficiency electrostatic sampling device of claim 13 in a vicinity to be sampled (column 9, lines 24-29), applying a high negative voltage to at least one discharge electrode to create a strong electrostatic field to airborne particulates (column 9, lines 55-62), and collecting particulates in or on a grounded, conductive material (column 10, lines 22-28) wherein said electrostatic field generates a sufficient electrostatic charge to capture viable organisms on a grounded, conductive plate (fig. 1 (4), column 4, lines 18-26, column 6, line 66 – column 7, line 1 and abstract).

Referring to claim 22, Mitchell et al. discloses the method as claimed wherein said particulates are microorganisms (abstract).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell et al. in view of Spurrell.

Referring to claim 17, Mitchell et al. discloses the device as claimed except wherein said grounded, conductive material is a media suitable to culture microorganisms.

Spurrell discloses an air sampler wherein said grounded, conductive material is a media suitable to culture microorganisms (abstract).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to incorporate the media of Spurrell into the device of Mitchell et al. for the purpose of growing the sampled microorganisms whereby providing more information about the gas sample.

Response to Arguments

5. Applicant's arguments filed July 8, 2005 have been fully considered but they are not persuasive.

6. In response to Applicants arguments with respect to claim 12, that "Mitchell et al. fail to teach an electrostatic sampling device wherein said device generates a sufficient electrostatic charge to capture viable organisms on a grounded, conductive material" (page 6, last paragraph), it should be noted that Mitchell et al. discloses these limitations as shown in the rejection above. The abstract of Mitchell et al. discloses that airborne contaminants, such as microorganisms (which are viable organisms), are reduced from the air and can be captured on a grounded collection tray. It should be noted that while the device of Mitchell et al. may be lethal to airborne and surface bacteria (as stated on page 7 of the arguments), there are no limitations in the claims that require that the microorganism be kept alive throughout the process. Although the

claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Final Rejection

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion

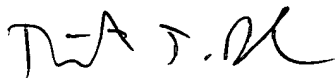
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Dole whose telephone number is (571) 272-2229. The examiner can normally be reached on Mon. thru Fri. from 8:00 to 4:30.

Art Unit: 2858

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (571) 272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TJD



ANJAN DEB
PRIMARY EXAMINER